

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation Regarding the Assignment of Interstate Pipeline Capacity Pursuant to D.T.E. 98-32-B)))))	D.T.E. 04-1
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COMMENTS OF AMERADA HESS CORPORATION IN SUPPORT OF THE MOTIONS OF NSTAR, KEYSPAN ENERGY DELIVERY NEW ENGLAND, FITCHBURG GAS AND ELECTRIC AND NEW ENGLAND GAS COMPANY FOR PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION CONTAINED IN RESPONSE TO INFORMATION REQUEST LDC 1-1 and 1-7 Supplemental.

Amerada Hess Corporation, (“Hess”), hereby supports the Massachusetts Local Distribution Companies’, (“LDCs”), requests for protective treatment of certain confidential proprietary and competitively sensitive information requested by the Department of Telecommunications and Energy, (“Department”) in Information Requests LDC 1-1 and LDC 1-7. Hess agrees with the LDCs that information contained in these responses is proprietary and competitively sensitive and needs to be protected from disclosure to other market participants and the general public. The impact of its release by each LDC, making it possible to aggregate data by marketer on a statewide basis, would enable each marketer’s business strategy in Massachusetts to be revealed, which may affect the direction and offerings of competitors, and may result in fewer options to consumers.

BASIS FOR CONFIDENTIALITY

Hess supports the protection from public disclosure sought by the LDCs of information regarding specific and named marketers’ market share and volumes, as well as the specifics of the LDCs’ current supply arrangements, because release of this information to competitors,

suppliers and the general public would be harmful to Hess and other marketers operating in Massachusetts, and would also be detrimental to customers.

Disclosure of load, market share and supply contract information by marketer name will allow anyone to analyze a marketer's statewide position and will put Hess and other marketers at a competitive disadvantage when negotiating for supplies to be delivered to certain Massachusetts city gates. This data provides a competitor or supplier with full knowledge of each marketer's volumetric requirements into the state of Massachusetts, which can be used to manipulate the price offered for such supplies. Such manipulation will inevitably result in higher prices to marketers and their customers.

Disclosure of Wholesale Information

With respect to disclosure of wholesale LDC supply information for example, assume an LDC purchases gas, which cannot be sourced anywhere but from a particular pooling point. If the LDC's supplier is identified by the information sought to be made public by the Department, suppliers with gas available to sell at that pooling point will be able to mark up the price of gas to the LDC's supplier because they now know how much that supplier needs, the term it will be needed for, and what the LDC has been paying its supplier. The immediate impact is that the LDC's supplier has been improperly disadvantaged due to disclosure of their proprietary contract information. The LDC's own customers will be adversely affected because any future suppliers of the LDC will either build the unjust risk created by this scenario into their price offerings, or simply choose it is not worth making an offer knowing that the specifics of their contracts will be made public.

Taking the same scenario with the LDC above one step further, other customers of the LDC's supplier will now know whether they are receiving different pricing terms than the LDC

without the knowledge of what factored into the determination and offering of that price. This will restrict the ability of the LDC's supplier to effectively compete for and negotiate existing or new business.

Disclosure of Retail Information

Refusal to grant confidentiality to volumetric and market share information by retail marketer will provide existing retail marketers or a new retail marketer entering the state with free market information regarding all of its competitors' marketing strategies. The marketers who have been operating in Massachusetts for a number of years have likely spent a great deal of time and money gaining market intelligence that would now be given away. There is no justification for giving entering marketers or marketers who have not spent the resources to gain this intelligence a competitive edge by releasing it to the public. Success in a competitive market should be the result of providing reliable, cost effective services and products; it should not be gained due to disclosure of proprietary information.

Release of this information will also harm established marketers and customers by revealing marketer's business strategies in Massachusetts. This information will make public the LDC's service territories that are being targeted by each marketer causing a number of negative impacts. With such knowledge, a competing marketer may decide rather than compete head to head with a dominant marketer in an attractive territory, it may opt to enter a service territory with less competition in order to gain greater margins. This leaves consumers in the abandoned territory with fewer options and allows the dominant marketer to increase its margins because there are fewer competitors.

Additionally, competitors may be able to discern a competitive advantage by entering a service territory where there are already a large number of customers accepting of a competitive

market. Entering this type of territory would allow the competitor to avoid spending time and money on customers who need to be educated before they would leave the LDC and select a competitive marketer. This deprives customers in service territories with small amounts of switching because they will not receive the benefits of choice and education that could have been provided by the new marketer had it not had the market share information.

Furthermore, marketers who discover through disclosure of the market share information that they have a dominant share in a particular territory may use this information to advertise themselves as dominant players so as to influence customers with that information rather than compete on price or other service terms. In addition, the dominant marketer will now know who its competitors are and their percentage shares of the market. With such knowledge, the dominant marketer is then left with the opportunity to systematically target each competitor for elimination. The result is fewer choices for customers. In any event, decisions could be made based on this information that absent the availability of this information would have been different.

Conclusion

In conclusion, Hess does not object to the Department obtaining this data on a confidential basis, however, Hess strenuously objects to any public disclosure of a wholesale supplier's supply contract information or an individual retail marketer's load and market share information across the state. Examples of the negative impact and unfair advantages that could be generated from disclosure are numerous, but the end result of all examples is likely to be adverse to competition, ultimately harming consumers. Accordingly, Hess requests the Department grant the confidential treatment correctly sought by the LDCs in order to ensure that active market participants and their customers are not harmed.

Respectfully Submitted,

On behalf of Amerada Hess Corp.

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